



Małgorzata Manowska
First President of the Supreme Court
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00-951 Warsaw
Poland

London, 8 June 2020

Dear Madam First President,

I am writing to you on behalf of the European Criminal Bar Association (ECBA) which connects and represents defence lawyers from all over Europe. The ECBA places great emphasis on respect for human rights and the rule of law and is particularly concerned with the situation of persons under criminal investigation, suspects and accused and with the issue of defending their fundamental rights.

The ECBA writes to express its concerns over the criminal case initiated against judge Igor Tuleya.

According to the information received by the ECBA, the National Prosecution Office has initiated a criminal case against judge Igor Tuleya – on the grounds that he acted illegally by publicly pronouncing his judgement in a case concerning possible criminal offences committed during a session of the lower chamber of Parliament in December 2017, when opposition MPs were not allowed to take part in the deliberations, voting reports had been reworked, and that there might not have been a quorum during the voting (the proceedings in the aforesaid case being closed to the press and public). Currently the prosecution has requested that the Disciplinary Chamber of the Supreme Court waive judge Igor Tuleya's judicial immunity so that it may move forward with charges against judge Tuleya.

In this context, the ECBA wishes to draw your attention to the fact that the Court of Justice of the European Union, ruling in the case C-791/19 *Commission v. Poland*, by its decision of April 8, 2020, has applied the following interim measures: 1) suspending the operation of the Disciplinary Chamber as either a first or second instance court in disciplinary cases against judges, and 2) ordering the Disciplinary Chamber of the Supreme Court to refrain from presenting any pending cases for consideration by any panels which do not meet the requirements of judicial independence, as defined in particular in the CJEU judgement of 19 November 2019 in cases C-585/18, C-624/18 and C-625/18, *A.K. et al. (Independence of the Disciplinary Chamber of the Supreme Court)*.

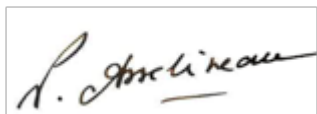
The interim measures apply directly to the current case. Since the Disciplinary Chamber is precluded from hearing any disciplinary cases against judges, it should also – *a fortiori* – refrain from hearing any cases concerning judges’ criminal liability. Secondly, since the combined Civil Chamber, Criminal Chamber and Labour Law and Social Security Chamber of the Supreme Court passed a resolution on 23 January 2020 in case SA I-4110-1/20 that no panel of the Disciplinary Chamber meets the requirements of judicial independence as defined in particular in the CJEU judgement of 19 November 2019, the second criterion of applicability of the CJEU interim measures is also satisfied.

Furthermore, the ECBA wishes to draw your attention to article 45 section 2 of the Polish Constitution, pursuant to which even though the trial may be closed to public under certain circumstances, the judgement itself – without any exceptions – must be pronounced publicly.

The ECBA would like to further emphasize that the right to a fair trial, enshrined in Article 6 of the European Convention on Human Rights (ECHR), also guarantees that, even if the press and public are excluded from all or part of the trial (on specific grounds, expressly defined in the ECHR), the judgement shall be – without exceptions – pronounced publicly.

In view of the above, the ECBA respectfully urges you to ensure that the current case against judge Igor Tuleya pending before the Disciplinary Chamber of the Supreme Court is either suspended for so long as the interim measures applied by the CJEU are in force, or referred to a different Chamber of the Supreme Court. In addition, the ECBA asks you to take all the necessary measures that are within your power to guarantee that all judges in Poland are able to perform their professional duties without fear of reprisal, hindrance, intimidation or harassment, in order to preserve the independence, integrity of the administration of justice and the rule of law.

Yours faithfully,



Vincent Asselineau
Chair of the European Criminal Bar Association